denied the power, they afford a very inadequate remedy against the formation of trusts, since no one generally can complain except a non-assenting stockholder, and a stockholder is rarely found who is disinterested enough to forego his share of the "gaineful pilladge" which a great combination can secure, in order to promote the general welfare.

In New York it has been held upon great deliberation, though with strong dissent, that a suit might be maintained by the attorney-general in the name of the State, under a system of legislation which showed a progressive tendency toward State supervision of corporations, to compel the trustees of a corporation to account for an unlawful disposition of the company's property, made with the consent of a majority of the stockholders.[23] But even here it was conceded that the State was to be regarded as the representative of those stockholders only who had not consented to the transfer.

Norfolk, Va. GORDON PAXTON.

THE ADOPTION OF STATE CONSTITUTIONS IN THE UNITED STATES.

In view of the fact that the Virginia Constitutional Convention has under consideration the question of proclaiming or submitting the new Constitution, it seems peculiarly fitting at this time to examine the precedents which have been established in the cases of the 131 state constitutions adopted since 1776. For convenience in classifying the different constitutions, the years from 1776, when in accordance with the recommendation of Continental Congress the colonies adopted their constitutions, to 1902 may be divided into three periods: the first period extending from 1776-1830; the second from 1830 to 1860, inclusive; and the last from 1861 to 1902.

I.

(1776-1830.)

(a) *Submitted*—In the first period, 1776-1830, the constitutions submitted to the vote of the people are as follows:

Constitution of Connecticut, 1818; Maine, 1820; Massachusetts,

[23] People *v.* Ballard (*supra*).

1780; Mississippi, 1817; New Hampshire, 1784 and 1792; New York, 1821.

(b) *Not submitted*—The constitutions adopted by conventions and not submitted to the people are as follows:

Constitution of Alabama, 1819; Delaware, 1776 and 1792; Georgia, 1777 and 1798; Illinois, 1818; Indiana, 1816; Kentucky, 1792 and 1799; Louisiana, 1812; Maryland, 1776; Missouri, 1820; New Hampshire, 1776; New Jersey, 1776; New York, 1777; North Carolina, 1776; Ohio, 1802; Pennsylvania, 1776 and 1790; South Carolina, 1776 and 1790; Tennessee, 1796; Vermont, 1796; Virginia, 1776.

The Constitution of Georgia of 1789 was framed by a convention and submitted to another convention for adoption or rejection. The Vermont constitutions of 1786 and 1793 were framed by conventions and submitted to the legislature. The Connecticut Constitution of 1776 and the South Carolina Constitution of 1778 were Acts of the legislature.

It is noteworthy that in the thirteen original colonies only one constitutional convention submitted its work to the people, the Massachusetts Constitution of 1780. The other colonies, however, adopted their Constitutions earlier, in 1776 and 1777, when immediate action was necessary, while their sister colony, Massachusetts, had a provisional government from the outbreak of the Revolution till the Constitution of 1780 was adopted.

(c) *Résumé*—Thirty-six constitutions were framed in the first period, of which 7 were submitted to the people and 24 were not submitted, making the percentage of submitted constitutions 19, and non-submitted 66 2-3.[1] Of the 7 submitted, 6 were in anti-slave states, and 1 in a slave state; of the 24 not submitted, 11 were in anti-slave states, and 13 in slave states.

II.

(1830-1860.)

(a) *Submitted*—During the second period, 1830-1860, the constitutions submitted are as follows:

Constitution of California, 1849; Illinois, 1848; Indiana, 1851; Iowa, 1846 and 1857; Kansas, 1857 and 1859; Kentucky, 1850; Louisiana, 1845 and 1852; Maryland, 1851; Michigan, 1835 and 1850; Minnesota, 1857; Mississippi, 1832; New Jersey, 1844; New

[1] The apparent discrepancy here arises from rejecting 5 constitutions.

York, 1846; Ohio, 1851; Oregon, 1857; Pennsylvania, 1838; Rhode Island, 1842; Tennessee, 1834; Texas, 1845; Virginia, 1830 and 1850; Wisconsin, 1848.

(b) *Not submitted*—The constitutions adopted by conventions and not submitted to the people are as follows:

Constitution of Arkansas, 1836; Delaware, 1831; Florida, 1838.

Owing to the agitation over slavery in Kansas it is difficult to affirm anything definite in regard to the Constitutions of 1855 and 1858.

(c) *Résumé*—Thirty-one constitutions were framed in this period, of which, casting out the 2 doubtful cases, 26 were submitted to the people and 3 were not submitted, making the percentage of submitted constitutions about 90 and non-submitted 10. Of the 26 submitted, 15 were in anti-slave states and 11 were in slave states; of the 3 not submitted, 1 was in an anti-slave state and 2 were in slave states.

III.

(1861-1902.)

(a) *Submitted*—In the third period, 1861-1902, the constitutions submitted are as follows:

Constitution of Alabama, 1875 and 1901; Arkansas, 1864, 1868 and 1874; California, 1879; Colorado, 1876; Florida, 1869 and 1885; Georgia, 1861, 1865, 1868 and 1877; Idaho, 1889; Illinois, 1870; Kentucky, 1891; Louisiana, 1864 and 1868; Maryland, 1864 and 1867; Mississippi, 1868; Missouri, 1865 and 1875; Montana, 1889; Nebraska, 1866, 1867 and 1875; Nevada, 1864; New York, 1894; North Carolina, 1865, 1868 and 1876; North Dakota, 1889; Pennsylvania, 1873; South Carolina, 1868; South Dakota, 1889; Tennessee, 1870; Texas, 1861, 1866, 1868 and 1876; Utah, 1895; Virginia, 1861 and 1870; Washington, 1889; West Virginia, 1861-1863 and 1872; Wyoming, 1889.

(b) *Not submitted*—The constitutions adopted by conventions and not submitted to the people are as follows:

Constitution of Alabama, 1861, 1865 and 1867; Arkansas, 1861; Delaware, 1897; Florida, 1861 and 1865; Louisiana, 1861 and 1898; Mississippi, 1861, 1865 and 1890; North Carolina, 1861; South Carolina, 1861, 1865 and 1895; Virginia, 1864.

(c) *Résumé*—Sixty-four constitutions were adopted in this period, of which 47 were submitted and 17 were not submitted—

making the percentage of submitted constitutions 75 and non-submitted 25. Of the 47 submitted, 22 were in Union states, and 25 in Secession states; of the 17 not submitted, 1 was in a Union state, and 16 were in Secession states.

Before summarizing it is well to look at the statistics in the Southern States. In the 11 states that seceded, the Ordinances of Secession submitted to the people number 3; those that were not submitted number 8. Here, as with the colonies during the Revolution, the necessity for immediate action must have influenced the method of adoption; and, furthermore, at this time the popular will was sufficiently well known without putting it to the test of voting. During the Reconstruction Period 20 constitutions were framed in the Southern States: of these 14 were submitted and 6 not, showing 70 per cent for submission and 30 for non-submission.

Large as is the percentage here in favor of submission, the constitutions of the territory north of the Ohio and west of the Mississippi show a still larger percentage in favor of that method of adoption. Previous to 1830, 4 constitutions were adopted, none of which were submitted; between 1830 and 1860, casting out the Kansas Constitution of 1855 and 1858, out of 14 adopted 14 were submitted; lastly, since 1860, 19 constitutions were adopted and all were submitted. These last cases show a percentage of 90 in favor of submission.

Leaving out the constitutions of 1776 and 1777 and constitutions between 1860 and 1870 and all doubtful constitutions, 56 constitutions were submitted and 20 were not submitted, showing a percentage of about 73 in favor of submission. Of the 56 submitted constitutions, 18 were in Secession states, and of those not submitted 9 were in Secession states.

IV.

Summary, 1776 to 1902—Finally, out of the entire 131 Constitutions framed, 80 were submitted; 44 were not submitted; 2 were doubtful; 2 were framed by a convention and adopted by the legislature; 2 were Acts of legislature; and 1 was submitted to a convention. The percentage of constitutions adopted since 1776 is 61 in favor of submission and 33 in favor of non-submission.[2]

To those who believe it more in accord with principles of true democracy for a constitutional convention to submit its work to

[2] The apparent discrepancy again arises from rejecting 7 constitutions.

the people for adoption or rejection, the change in the percentage in favor of submission is very satisfactory. Before 1830, only 19 per cent of the constitutions were submitted; between 1830 and 1860, about 90 per cent were submitted. In the third period there is a fall of about 15 per cent. This, however, is easily accounted for. Necessarily the second period, 1830-1860, is the most normal, since there were no wars to hasten the adoption of constitutions, as in 1776 and 1861, and no need to disqualify ignorant voters who already possessed the right of suffrage. On the whole it is safe to say that the practice throughout the states of the United States has been in favor of submitting the constitutions to the people wherever it was possible to do so.

Lynchburg, Va. E. D. L. LEWIS.

LICENSE TAXATION BY MUNICIPAL CORPORATIONS. IS THE POWER UNLIMITED IN VIRGINIA?

Woodall v. *City of Lynchburg*, 4 Va. Sup. Ct. Rep. 166.

This case involved the validity of an ordinance of the City of Lynchburg imposing a license-tax of $500 per annum on the business of labor agent. Woodall, who had paid the tax under protest, brought suit to recover it back, on the ground that the tax was excessive to the extent of working a destruction to his business, and therefore unreasonable, oppressive and illegal. Upon a demurrer to the declaration, the Circuit Court held that the legislature had authorized the city in its charter to tax this business, and, as the authority was conferred without any limitation as to the amount of the tax that might be imposed, the city's powers were co-extensive with those of the legislature, and the reasonableness of the tax was a matter of discretion, residing solely with the legislative department of the city, with which discretion the judiciary had no right to interfere; and the demurrer was accordingly sustained. Upon appeal, this view was affirmed by the Court of Appeals.

It was alleged in the declaration, and admitted by the demurrer, that the business was a perfectly lawful one in itself. Being such, the exaction cannot properly be regarded as a privilege tax under